

Example of Non-Disclosure Agreement for — Depot Maintenance PPP Agreement —

PROPRIETARY INFORMATION EXCHANGE AGREEMENT

This Proprietary Information Exchange Agreement (hereinafter "Agreement") is made and entered into as of the date it is executed by both Parties, (insert name and address of Customer) and the *depot name, city, state* (hereinafter "*Depot*").

RECITALS

A. Each of the Parties possesses, or may possess, certain Proprietary Information (as defined below) related to the (insert name of aircraft, system, component, or program) (hereinafter "Program") which the other Party may wish to review.

B. The Parties recognize that the Proprietary Information is a valuable asset of the Disclosing Party, and that misuse or unauthorized disclosure will substantially impair the value of the Proprietary Information.

C. Each Party acknowledges that the other Party may now sell, or have under development, products that are competitive with those of the other Party. Disclosures of Proprietary Information under this Agreement shall not impair the right of the Receiving Party to independently develop, manufacture, use and/or sell products and services competitive with those offered by the Disclosing Party.

NOW THEREFORE, in consideration of the mutual promises herein set forth, the Parties agree as follows:

1. DEFINITION OF PROPRIETARY INFORMATION

"Proprietary Information" means any information, technical data or know-how in whatever form, including, but not limited to, documented information, machine readable or interpreted information, information contained in physical components, maskworks and art work, which are clearly identified and marked as being proprietary or otherwise restricted information.

Information transmitted orally or visually shall be considered to be Proprietary Information provided such Proprietary Information is identified by the Disclosing Party prior to disclosure, reduced to written summary form, and marked as being proprietary or restricted information by the transmitting Party, and transmitted to the recipient within thirty (30) business days after such oral or visual transmission. During this thirty (30) business day period, such oral or visual information so disclosed shall be provided the same protection as provided Proprietary Information as set forth below. Failure to so identify, reduce to writing, mark, and deliver such verbally or visually disclosed information in the manner prescribed shall relieve the Receiving Party of all obligations of protection with respect to said disclosed information thereafter.

Notwithstanding the above provisions, the *Depot* is subject to the definition and substantive requirements in controlling Federal laws, rules, and cases.

For the purpose of this Agreement, Proprietary Information also includes "Competition Sensitive Information." Competition Sensitive Information means information in any form, whether written or otherwise, that discloses, in whole or in part, information with respect to work performed,

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planned to be proposed, or actually proposed to be performed by either Party and can be reasonably expected to have a material effect on the competitive position of such Party. This would include information provided by either Party to the other that is marked with any restrictive distribution statements. In addition, the information must be 1) appropriately labeled Competition Sensitive Information, or 2) oral or visual information that is verbally designated at the time of disclosure as Competition Sensitive Information and subsequently confirmed as such within 30 days after the initial oral or visual disclosure in a written document marked as Competition Sensitive Information and listing or summarizing the oral or visual information which was disclosed as Competition Sensitive Information. In addition, Competition Sensitive Information includes information that is derived by the Receiving Party from information designated as Competition Sensitive Information by the providing Party. Notwithstanding the above, information will not be Competition Sensitive Information to the extent, if any, it 1) is in the public domain or becomes generally available to the public through no contractual breach, 2) is received by any Party from a third party free to disclose such information or 3) was independently developed by the Party receiving the Competition Sensitive Information prior to that Party's receipt of that information.

2. INFORMATION NOT CONSIDERED PROPRIETARY

Proprietary Information does not include information that is:

- a. developed by the Receiving Party independently of the Disclosing Party as supported by the Receiving Party;
- b. rightfully obtained without restriction by the Receiving Party from a third party;
- c. publicly available other than through the fault or negligence of the Receiving Party;
- d. released without restriction by the Disclosing Party to a third party without an obligation of confidentiality;
- e. known to the Receiving Party at the time of its disclosure;
- f. disclosed pursuant to judicial action or government regulations; or
- g. contained in any other documents provided to the Receiving Party and not defined as Proprietary under controlling Federal laws, rules, and cases, or as defined in paragraph 1.

3. MARKING OF PROPRIETARY INFORMATION

Any Proprietary Information exchanged by the Parties and entitled to protection hereunder shall be identified as such by an appropriate stamp, marking, or typed legend on each document exchanged designating that the information is "Proprietary Information," "Restricted Information" or "Competition Sensitive Information" as set out in paragraph 1.

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4. PROTECTION

The Receiving Party shall hold each item of Proprietary Information so received in confidence until five (5) years after the expiration of this Agreement (the "Proprietary period"). In protecting such information from disclosure, the Receiving Party shall use at least the same degree of care as it normally uses in the protection of its own proprietary or restricted information of like kinds. Such degree of care shall be no less than the prevailing standard of reasonable care in the Receiving Party's industry, and as set out in paragraph 1.

5. ALLOWABLE USES

a. During the Proprietary Period, each Receiving Party agrees that it will not use any Proprietary Information received from the other except for the purposes contemplated by this Program: Formulating a Commercial Services Agreement for the Program (i.e., evaluation of a business opportunity, joint proposal preparation, manufacturing for the Disclosing Party, etc.) However, with respect to Proprietary Information developed during this Agreement, or follow-on contract, to which *Depot* paid for, partially or otherwise, or assisted in developing, etc., *Depot* will have the right to use Proprietary Information in the manner described for Government use under controlling Federal laws, rules, and cases.

b. The Receiving Party may, during the life of the Agreement and after the expiration of the Agreement, use the Proprietary Information developed by the Disclosing Party to perform any services relating to the products or equipment developed under the cognizance of any contract entered into for the purposes of the Program.

6. IMPERMISSIBLE USES, NO RIGHTS GRANTED

a. Neither Party hereto shall, without prior written consent of the other, (i) disclose such Proprietary Information during the Proprietary Period in whole or in part; or (ii) use in whole or in part, Proprietary Information disclosed by the other to manufacture or enable manufacture by itself or third parties of the Disclosing Party's products, products similar thereto, or products derived therefrom.

b. The Receiving Party may not use the Proprietary Information to reproduce, redesign, reverse engineer or manufacture any products or equipment of the Disclosing Party. The Receiving Party may not use the Proprietary Information to perform any services relating to the products or equipment of the Disclosing Party outside the scope of this Agreement.

c. Proprietary Information shall remain the property of the Disclosing Party. Nothing in this Agreement shall be construed as granting or conferring any rights on the part of any Party by license or otherwise, expressly or implied to any invention or discovery, or to any patent covering such invention or discovery. Except as expressly provided herein, no rights, licenses or relationships whatsoever are to be inferred or implied by the furnishing of Proprietary Information pursuant to this Agreement.

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d. As set out above, the Federal government will have the right to disclose as may be required by controlling Federal laws, rules, and cases.

7. PERMITTED DISCLOSURES

a. The Receiving Party shall make the Proprietary Information available only to its employees, contract employees, and other parties working on the Program and having a "need to know" with respect to said purpose. In connection therewith, the Parties shall advise each such employee, contract employee, or other party of its obligations under this Agreement.

b. If authorized in writing by the Disclosing Party, the Receiving Party may disclose Proprietary Information of the Disclosing Party to a third party, provided that the Receiving Party requires the third party to enter into a proprietary information exchange agreement with similar terms and conditions to this Agreement and such agreement is provided to the Disclosing Party within fifteen (15) business days after the date on which it was entered.

c. Except when authorized in writing by the Disclosing Party, the Receiving Party shall not otherwise disclose such Proprietary Information during the Proprietary period (except that notwithstanding the restrictions set out herein with respect to disclosure of Proprietary Information to third parties, the Parties may incorporate such Proprietary Information in proposals, reports, or other submittals to the U.S. Government in connection with the above-described project, provided, however, that information disclosed to the U.S. Government bears the restrictive legends as applicable in FAR 52.215-1(e), Restrictions on Disclosure and Use of Data, (and similar DFARS provisions) in effect on the Effective Date of this Agreement, or like successor provision substantially the same).

8. RETURN OR DESTRUCTION OF PROPRIETARY INFORMATION

Upon written request of the Disclosing Party, the disclosed Proprietary Information and all copies thereof shall, upon the expiration or termination of this Agreement, be returned to the Disclosing Party, or be destroyed and a written certificate of destruction shall be provided to the Disclosing Party, unless permitted to be maintained within the Federal government as set out in the Use Rules and/or controlling Federal laws, rules, and cases.

9. LEGAL ACTIONS AND GOVERNMENT REGULATIONS

Should the Receiving Party be faced with legal action or a requirement under U.S. or foreign government regulations to disclose Proprietary Information received hereunder, the Receiving Party shall forthwith notify the Disclosing Party and upon the request of the latter, the Receiving Party shall cooperate in contesting such disclosure, unless the action is against an agency of the Federal government, which would preclude cooperation by *Depot*. Neither Party shall be liable in any way for any disclosures made pursuant to law or judicial action, or federal or foreign government rules or regulations.

In addition, neither Party shall be liable in any way for any inadvertent disclosure or use where the customary degree of care has been exercised by the Receiving Party as it normally uses to

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protect its own Proprietary Information; provided that upon discovery of such inadvertent disclosure or use, the Receiving Party shall notify the original Disclosing Party immediately, and shall endeavor to prevent any further inadvertent disclosure or use.

10. RELATIONSHIP BETWEEN THE PARTIES

a. This Agreement does not create a teaming agreement, joint venture, partnership, or other such arrangement; rather, the Parties expressly agree that this Agreement is solely for the purpose of disclosing and protecting Proprietary Information. Any exchange of Proprietary Information under this Agreement shall not be deemed as constituting any offer, acceptance, or promise of any further contract or amendment to any contract that may exist between the Parties. Nothing herein shall be construed as providing for the sharing of profits or losses arising out of the efforts of either or both Parties. Each Party shall act as an independent contractor and not as an agent of the other for any purpose whatsoever and neither shall have any authority to bind the other.

B Neither Party promises to provide the other Party with Proprietary Information. The decision to provide any Proprietary Information is within the sole discretion of the Party originally possessing the Proprietary Information.

11. EXCLUSIVE CONTACTS

The following persons will, on behalf of the respective Parties, be the sole individuals authorized to receive and/or transmit written Proprietary Information:

Customer (POC):

Depot (POC):

Either Party may change the exclusive contact by written notice.

12. TERM OF AGREEMENT

This Agreement shall expire upon termination or expiration of Commercial Services Agreement entered into by parties. The provisions of Sections 4, 5, 6, 7, 8, and 13 shall survive such expiration or termination.

13. DISPUTE RESOLUTION

a. Before the Parties resort to litigation to solve any dispute, the Parties agree to schedule a mandatory meeting at a mutually agreeable location, which meeting will be attended by at least one senior manager from each Party. At that meeting, each side will represent its dispute and the senior managers will enter into good faith negotiations in an attempt to resolve the dispute.

b. In the event the dispute is not resolved, the Parties retain all applicable remedies available in law or equity.

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c. This Agreement shall be governed by and interpreted only in accordance with Federal laws and no greater rights provided under Federal laws are granted herein.

d. Notwithstanding any other rights of either Party, either Party may seek injunctive relief in any court of competent jurisdiction against improper use or disclosure of Proprietary Information.

14. EXPORT OF PROPRIETARY INFORMATION

The Receiving Party represents and warrants that no technical data furnished by the Disclosing Party shall be exported from the United States to a foreign nation (excluding DoD components situated in foreign nations) without first complying with all requirements of the International Traffic in Arms Regulations and the Export Control Act and regulations issued thereunder, including the requirement for obtaining any export license, if applicable. The Receiving Party shall first obtain the written consent of the Disclosing Party prior to submitting any request for authority to export any such technical data.

15. CONTROLLING LAW

This Agreement shall be governed by and interpreted only in accordance with Federal laws and controlling Federal laws, rules, and cases.

16. MISCELLANEOUS

a. Except as to a sale or transfer of the business to which this Agreement relates or an assignment to a corporate parent, subsidiary, or affiliate, the rights of the Parties under this Agreement may not be assigned or transferred to any person, firm, or corporation without the express, prior written consent of the other Party, which consent will not be unreasonably withheld.

b. This Agreement may be signed in one or more counterparts (including faxed copies), each of which shall be deemed one and the same original.

c. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. The terms of this Agreement may not be superseded by any specific legends or statements associated with any Proprietary Information, and may not be amended except by written document signed by duly authorized representatives of each of the Parties.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the date first written above.

Depot

Customer

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____